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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,221	03/04/2002	James L. Dunn	P6228	3497

7590

08/13/2003

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EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 08/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,221

Applicant(s)

DUNN ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 29-40 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 3-8 and 10-28 is/are allowed.
- 6) ☒ Claim(s) 1, 2 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) ✓
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restriction

Restriction to one of the following inventions is required under 35 U.S.C. § 121:

- I. Claims 1-28, drawn to a cart for collecting medical waste, classified in class 604, subclass 319.
- II. Claims 29-32, drawn to a cap, classified in class 220, subclass 235.
- III. Claims 33-40, drawn to a system comprising a cart with a canister and drainage station for cleaning the canister, classified in class 134/56R.

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a snap-type inner cap could be used in place of the screw-type inner cap. The subcombination has separate utility such as use in any device requiring a removable inner cap with multiple ports.

Inventions III and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as

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claimed because the combined invention does not require a suction line. The subcombination has separate utility such as the cart may be used to collect medical waste in the absence of the drainage station.

Inventions III and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because a snap-type inner cap could be used in place of the screw-type inner cap. The subcombination has separate utility such as use in any device requiring a removable inner cap with multiple ports.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Blake Johnston on August 5, 2003 a provisional election was made with traverse to prosecute the invention of a cart, claims 1-28.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

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Claim Objections

Claim 1 is objected to because of the following informalities:

In line 9, "a suction line" is recited, presumably the same suction line recited in line 5.

This can be clarified by replacing "a" in line 9 with --said--.

In line 10, "a vacuum source" is recited, presumably the same suction line recited in line 6. This can be clarified by replacing "a" in line 10 with --said--. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 9 are rejected under 35 U.S.C. § 102(b) as being anticipated by Parker (US 4,863,446).

Parker teaches a cart (3) for collecting medical waste comprising a body (15) supported by a plurality of wheels (11);

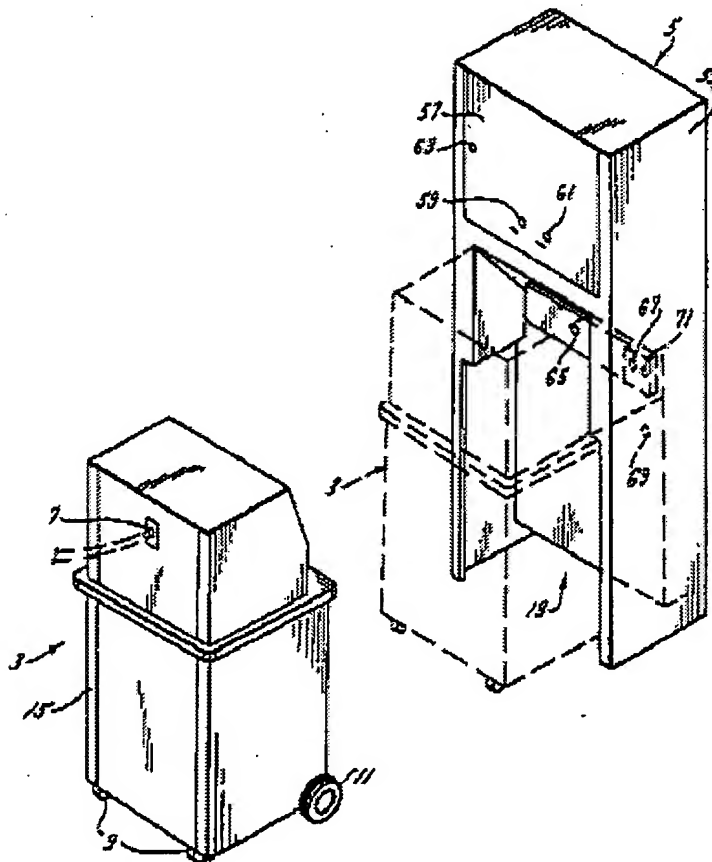
a container (81) supported by said body (15) and having a drain port (53) therein;

a cap positioned on said container (81) and including a patient port (31) and a vacuum port (7) said patient port (31) adapted to selectively communicate with a suction line (33) and said vacuum port (7) adapted to selectively communicate with a vacuum source (fig. 9); and

a liquid level detector (21) in communication with said container (81);

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whereby medical waste is collected in said container (81) through a suction line (33) connected to said patient port (31) when said vacuum port (7) is connected to a vacuum source (fig. 9) and the collected medical waste in the container (81) may be detected via the liquid level detector (21)(see fig. 1, below).



Regarding the container cap, the container (81) taught by Parker is designed to operate under a vacuum and inherently has some sort of cap to provide the sealed enclosure necessary to provide such a vacuum.

Regarding the limitations concerning the container being adapted to selectively communicate with a drainage station, there is no physical structure recited in the claimed invention which is directed to a drainage station.

Regarding claim 2, Parker teaches a vacuum regulator (35).

Regarding claim 9, Parker teaches a filter (75) in communication with said vacuum port (7).

Allowable Subject Matter

Claims 16-28 are allowed.

Claims 3-8 and 10-15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 3, the closest art of record, Parker (US 4, 863,446) fails to teach a second container with vacuum and patient ports incorporated on a cap.

Regarding claim 4, Parker fails to teach a control panel upon a housing which contains a vacuum regulator.

Regarding claims 5-7 and 16-28, Parker fails to teach the multiple-piece cap containing vacuum and patient ports, and in the opinion of the Examiner, this is a non-obvious improvement.

Regarding claims 8 and 11-13, Parker fails to teach a cap incorporating a flushing port.

Regarding claim 10, Parker fails to teach a smoke plume filter.

Regarding claim 14, Parker fails to teach a liquid capacitance sensor.

Regarding claim 15, Parker fails to teach a shelf which supports the container.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (703) 605-1184. The examiner can normally be reached Monday-Friday.

In the event the examiner is not available, the examiner's supervisor, Weilun Lo may be reached at phone number (703) 308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 746-3380 for informal communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0858.


Michael Bogart
August 6, 2003


GLENN K. DAWSON
PRIMARY EXAMINER